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# In the Supreme Court of the United States

THE G. S. WILLARD COMPANY, a corporation, HENRY S. NARTEN, HARRY F. NARTEN and W. A. DUFF,

*Appellants,*

vs.

A. MITCHELL PALMER, as Attorney General of the United States, EDWIN S. WERTZ, as United States District Attorney for the Northern District of Ohio,

*Appellees.*

## BRIEF OF THE APPELLANTS.

### STATEMENT OF THE CASE.

This cause came on to be heard in the District Court upon the motion of the appellants for a temporary injunction on the face of the original bill of complaint and upon the motion of the appellees to dismiss said original bill.

The appellants, in support of their motion, offered the original bill, which was sworn to positively, and the defendants made no reply to the allegations therein contained, either by way of affidavit or answer. The motion to dismiss is upon the grounds that the bill showed no basis for equitable relief, that the Court could not enjoin a criminal proceeding and that the plaintiffs had an adequate remedy at law.

## SUMMARY OF BILL.

### PLAINTIFFS.

The G. S. Willard Company is an Ohio corporation, engaged in buying and selling sugar in Northern Ohio. Its principal customers are bakers, retail grocers and retail dealers in ice cream and similar products. The individual plaintiffs are all executive officers and all stockholders in the corporation plaintiff.

### DEFENDANTS.

The defendants are the Attorney General of the United States and the United States Attorney for the Northern District of Ohio.

### JURISDICTION OF THE COURT.

The matter in controversy exceeds $3,000.00, exclusive of interest and costs, and the suit involves the constitutionality of certain sections of the Lever Law, under which criminal proceedings were threatened. The bill alleges that:

> The provision of the law under which the Government officials threatened to proceed is unconstitutional and void, and also that irreparable damage would result to the plaintiffs from the prosecution of the threatened criminal proceedings.

### UNCONSTITUTIONALITY OF SECTION 4 OF THE LEVER LAW.

The unconstitutionality of this section of the Lever Law is assailed upon a number of different grounds, including the following:

That the enactment of said provision was at the time of the enactment thereof beyond the power of Congress;

That said provision is so vague, indefinite and uncertain that it cannot have the force or effect of law within the meaning of the Constitution of the United States, and particularly the Fifth amendment thereof;

That it is unconstitutional and void because the execution of a fine or penalty under its provisions would constitute the taking of property or the deprivation of liberty without due process of law in violation of the Fifth amendment;

That the prosecution and punishment of a person under said provision would be in violation of the Sixth amendment to the Constitution, which requires that in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation against him;

That the provisions of the Lever Law do not furnish any standard or rule or basis for determining what are "necessaries" or what are "excessive prices," or what is the meaning of the phrase "to limit the facilities for transporting, producing, supplying, storing and dealing in any necessaries," or what is the meaning of the phrase "to restrict the supply of any necessaries," or the phrase "to restrict the distribution," or for determining what is "an unjust" or "unreasonable" "rate" or "charge," or what constitutes "discriminatory and unfair or any destructive or wasteful practice or device in the handling or dealing in or with any necessaries," all as used in said Act, and said words and phrases so used have no definite and established meanings;

That the provisions are unconstitutional in so far as they attempt to make it a crime to charge "excessive prices," for the reason that it is an unconstitutional delegation of legislative power to vest the vocation of fixing prices in a court or a jury;

That said provisions do not define the offenses thereby denounced as crimes, but leave the determination thereof to the varying opinions of judges and juries in trials after the fact, making said provisions merely *ex post facto* laws in conflict with Article I, Section 9, subdivision E of the Constitution;

That the classifications made in Section 4 of the Lever Act, as amended by Section 2 of the Amended Act of 1919, whereby those engaging in certain occupations, pursuits and businesses are wholly exempt from the operation thereof, are unjust, unreasonable and arbitrary and render the section unconstitutional and void.

## IRREPARABLE INJURY TO PLAINTIFFS' PROPERTY RIGHTS.

It appears on the face of the bill that the corporation plaintiff obtains practically its entire sugar supply from The American Sugar Refining Company and The Franklin Sugar Refining Company. Owing to the scarcity of sugar at the time the bill of complaint was filed, at that time it had to purchase its sugar supply from these companies or it would be unable to do business. Under date of May 7, 1920, the plaintiff corporation was informed that if indicted The American Sugar Refining Company and The Franklin Sugar Refining Company could make no further sales of sugar to it, so that an indictment would practically terminate the business of the plaintiffs, would not only ruin the business but subject all of the plaintiffs in the court below to all of the incidental damage resulting from an indictment returned under a law which we contend is plainly and absolutely unconstitutional and void.

## FACTS ADMITTED BY DEFENDANTS.

The defendants have failed to file either an answer or affidavit denying any of the allegations of the bill and having filed a motion to dismiss based upon its face, must be held to have admitted all of the facts pleaded therein.

## BRIEF OF THE ARGUMENT.

### THE FEDERAL COURTS HAVE JURISDICTION TO ISSUE THE INJUNCTION PRAYED FOR ENJOINING THE PROSECUTION OF THE THREATENED CRIMINAL PROCEEDING AGAINST THE CORPORATION PLAINTIFF AND ITS OFFICERS AND EMPLOYEES.

#### A. IT IS WELL ESTABLISHED THAT A COURT OF EQUITY CAN ENJOIN A FEDERAL OR STATE OFFICIAL WHEN HE IS ACTING UNDER AN UNCONSTITUTIONAL STATUTE.

It seems unnecessary for us to make any argument in support of this general proposition beyond calling attention to the numerous authorities herein cited.

Jurisdiction over suits in equity against United States attorneys enjoining the prosecution of criminal proceedings by such attorneys alleged to be unconstitutional, has been sustained in the following cases:

*Hannah & Hogg vs. Clyne, United States District Attorney*, 263 Fed. 599.

*Lamborn vs. McAvoy, U. S. District Attorney*, Decision in U. S. District Court, Eastern District of Pennsylvania, decided in June, 1920.

*Weed & Company vs. Lockwood, U. S. District Attorney*, U. S. C. C. A. for Second Circuit, decided in May, 1920.

*Detroit Creamery Co. vs. Kinnane, U. S. District Attorney,* District Court of the Eastern District of Michigan, Southern Division, April, 1920.

*Temple Fuel Company vs. Tedro, United States District Attorney,* District Court for the District of Colorado, April, 1920.

*Lewis & Son Drygoods Company vs. Tedro, United States District Attorney,* District Court for the District of Colorado, April, 1920.

*Wilson vs. New, United States District Attorney,* 243 U. S. 332.

*Hammer, United States District Attorney vs. Dagenhart,* 247 U. S. 251.

*Ruppert vs. Caffey, U. S. District Attorney,* 251 U. S. 264.

The same doctrine has been applied to suits against other Federal officials:

*Philadelphia Company vs. Stimson, Secretary of War,* 223 U. S. 605—

and in suits against State officials, in spite of the express provisions of Section 720 of the Revised Statutes that Federal Courts cannot grant injunctions against proceedings in any state court.

*Ex Parte Young,* 209 U. S., 123.

*Rast vs. Van Deman,* 240 U. S., 342.

*Truax vs. Raich,* 239 U. S., 33.

Suits brought against United States Attorneys or other Federal officials are not suits against the United States, and it is held that suits against state officials are not suits against the state, because when a Federal or state officer is proceeding under an Act that is unconstitutional he is "stripped of his official or representa-

tive character and is subjected in his person to the consequences of his individual conduct."

The general doctrine applicable in this connection is stated succinctly in the opinion of this Court in *Ex Parte Young*, 209 U. S., 123, *supra*, where it is said, in answer to the contention that the proceeding against Young, attorney general of Minnesota, was in effect a suit against the State of Minnesota:

> "The answer to all this is the same as made in every case where an official claims to be acting under the authority of the state. The act to be inforced is alleged to be unconstitutional, and if it be so, the use of the name of the state to inforce an unconstitutional act to the injury of complainants is a proceeding without the authority of and one which does not affect the state in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official in attempting by the use of the name of the state to enforce a legislative enactment which is void because unconstitutional. *If the act which the state Attorney General seeks to enforce be a violation of the federal Constitution, the officer in proceeding under such enactment comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The state has no power to impart to him any immunity from responsibility to the supreme authority of the United States.* See *In re Ayers, supra*, page 507. It would be an injury to complainant to harass it with a multiplicity of suits or litigations generally in an endeavor to enforce penalties under an unconstitutional enactment, and to prevent it ought to be within the jurisdiction of a court of equity." (pp. 159-160).

The contention that a suit against the Secretary of War was a suit against the United States is disposed of

in similar manner and by like reasoning by this Court in the case of *Philadelphia Company vs. Stimson, Secretary of War, Supra.*

**B. THE IRREPARABLE INJURY ENTITLING THE PLAINTIFFS TO AN INJUNCTION MAY ARISE FROM AN UNLAWFUL INTERFERENCE WITH AND INTERRUPTION OF THE PLAINTIFFS' BUSINESS OR EARNINGS.**

The allegations of the bill show that the threatened prosecution of the plaintiffs would cause the practical destruction of their business;

That such rights of property and such threatened damage thereto show a case for the interference of a court of equity appears from a large number of decisions of both state and federal courts, from which we cite only a few:

In *Weed & Company vs. Lockwood, U. S. Attorney for the Western District of New York, supra,* the Circuit Court of Appeals for the Second Circuit had before it on appeal a bill seeking to restrain and enjoin the defendants from taking any further proceedings upon, and subsequent to, the indictment against the plaintiff pending in the District Court for the Western District of New York and to restrain the defendant from instituting any further prosecutions under the Lever Law as amended by the Act of October 22, 1919. The bill filed in this case set forth that the plaintiff was engaged in the drygoods business and Circuit Judge Manton, in delivering the opinion of the court, said:

> "The right to maintain this action in equity to restrain the United States Attorney in a criminal prosecution is challenged. The constitutionality of the act is involved. In addition thereto, *the property rights and the reputation of the appellant are involved.* The claim is that if the act be held to be unconstitutional, the appellant will be deprived of

its property without due or any process of law; *will suffer repeated harassment and may be subject to a multiplicity of prosecutions. It would suffer a great monetary loss, its reputation would be greatly impaired, and its good will and business, which it now owns, possesses and has enjoyed, will be greatly impaired, if not entirely destroyed and thus irreparable damage will be done to it. We think that if the appellant is right in its contention that the act is unconstitutional, it may maintain this action in equity.* This court said in *Jacob Hoffman Brewing Co. vs. McElligott et al.* (259 Fed. Rep. 525):

"'A suit in equity to enjoin the United States Attorney from instituting criminal proceedings under a statute of the United States is manifestly a suit against the United States. * * * if property rights are invaded, and the statute in question is unconstitutional, it is void, is to be treated as nonexistent, and so no defense to the United States Attorney. When instituting criminal proceedings under it he is to be regarded not as representing the United States in his official capacity, but as acting individually.'

"In *Wilson, etc. vs. New et al.* (243 U. S. 332), an action, similar in form, was commenced against the United States Attorney for the Western District of Missouri. The District Court held that the so-called eight-hour railroad law was unconstitutional, but the Supreme Court reversed the decree on the ground that the law was constitutional and dismissed the bill. In the later case of *Hammer vs. Dagenhart* (247 U. S. 251) in contesting the constitutionality of an act of Congress, involving child labor, the same procedure was followed. *The Supreme Court, in both cases, considered the merits of the claim of questioned constitutionality as to each act, and, while it did not in express words approve the procedure, it did necessarily approve it, by considering the merits of the issues raised.*

*"The majority of the Court are of the opinion that a direct injury to the property of the appellant here would follow* if the law were declared unconstitutional, and, that if such were the case, *it might maintain this action in equity."*

Circuit Judge Hough in a concurring opinion said:

"Whether 'property rights are invaded' is a question of degree. *Yet oftentimes the degree of invasion is a test of equitable jurisdiction. Thus there is usually no difference in material kind between a single act of nuisance and a continuing nuisance.* So here,—for one making a sale a month might perhaps continue to exist in a business sense under this statute; he could find out whether he was a criminal before he was ruined. *But a retail storekeeper who cannot do a day's business without running the risk of perhaps a thousand indictments is suffering a very real invasion."*

In the above case it is, to be sure, true that the Circuit Court of Appeals held the provisions of the Lever Law there in question (Section 4 as amended) constitutional and, therefore, denied the injunction, but its declaration that a property right was involved and that there was equity jurisdiction to enjoin the criminal prosecution is none the less authoritative.

In the five cases following the courts not only held that equity had jurisdiction to enjoin the criminal proceedings but also held that the provisions of the Lever Law, under which such criminal proceedings were instituted, were unconstitutional and void.

In *Lamborn vs. McAvoy,* Judge Thompson, of the District Court of the United States for the Eastern District of Pennsylvania, rendered an opinion, to which we shall have occasion to refer again in connection with that portion of our argument dealing with the unconstitutionality of the Lever Law. We here quote only that por-

tion of the opinion which has to do with the jurisdiction of a court of equity. Judge Thompson said, in this connection:

> "This is a suit in equity brought to enjoin the United States Attorney and other officials of the United States from instituting and prosecuting criminal proceedings against the plaintiffs for alleged violations of Section 4 of the Act of August 10, 1917, as amended by the Act of October 22, 1919, which makes it a criminal offense to 'make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries.'
>
> The plaintiffs, who are engaged in handling, importing, selling and distributing raw and refined sugars, aver that they are *threatened with criminal prosecution* upon the charge stated, in that they sold a large quantity of sugar at a price which it is charged is unjust and unreasonable, and that they are threatened in case of prosecution with such action upon the part of the United States Sugar Equalization Board as *would interfere with and ruin their business*: that the language of the statute by reason of being vague, indefinite and uncertain cannot be enforced by the courts without depriving the plaintiffs of their liberty and property without due process of law in violation of the Fifth Amendment to the Constitution, and that it does not inform the accused of the nature of the accusation against him and is therefore in violation of the Sixth Amendment to the Constitution.
>
> If the langauge of the statute renders it unconstitutional upon the grounds stated, it is unnecessary to consider the other grounds of unconstitutionality set up in the bill and urged at the hearing.
>
> *The facts appearing from the pleadings and affidavits are, in my opinion, sufficient to sustain equitable jurisdiction under the rule* stated by Mr. Justice Day in *Dobbins vs. Los Angeles*, 195 U. S. 223:
>
> 'It is well settled that where property rights will be destroyed unlawful interference by criminal

proceedings under a void law or ordinance may be reached and controlled by a decree of a court of equity. *Davis & Farnum Mfg. Co. vs. Los Angeles*, 189 U. S. 207, 218, and cases therein cited.' "

See also:

*Ex parte Young*, 209 U. S., 123.

*Philadelphia Company vs. Stimson, Secretary of War*, 223 U. S. 605.

In *Detroit Creamery Company vs. Kinnane*, District Judge Tuttle of the Eastern District of Michigan, Southern Division, in sustaining a bill for an injunction against threatened prosecutions under Section 4 of the Lever Law stated the substance of the bill of complaint filed by the Creamery Company and others who were engaged in the business of purchasing milk from producers and preparing the same for resale distribution to consumers within the City of Detroit, which bill alleged:

"* * * that plaintiffs had in their employ upwards of five hundred milk salesmen selling their milk at retail to householders and consumers daily and that the fines capable of being levied or claimed rightfully to be levied on one day's transactions against such salesmen would aggregate millions of dollars * * * that by reason of the *aforesaid threats* of the defendants against plaintiffs, said milk salesmen would not continue to deliver milk at lawful prices and as a result of the claimed and usurped authority of the defendants, unless restrained, *the business of ths plaintiffs would be irreparably injured and destroyed;* * * * that the threatened criminal prosecution referred to would involve the plaintiffs in contractual difficulties and litigation over existing contracts for the supplying of milk to them, *would result in the destruction of their established business* and would operate to deprive the plaintiffs of their property without due process of law."

Speaking of the question of the jurisdiction of the court upon such a bill, Judge Tuttle said:

> "*There can be no doubt of the power of this Court to enjoin the defendant,* although occupying the official position which he does, from attempting to enforce an unconstitutional criminal statute against the plaintiffs, in excess of his lawful authority and to their threatened and resultant irreparable injury, as alleged in the bill of complaint herein. *Philadelphia Co. vs. Stimson,* 223 U. S., 605, 56 L. Ed. 570, *William Cramp & Sons Ship & Engine Building Co. vs. International Curtis Marine Turbine Co.,* 246 U. S., 28, 62 L. Ed. 560.
>
> The commencement of various criminal prosecutions based upon alleged violation of the statutory provision here involved clearly indicates the intention of the defendant District Attorney to attempt the enforcement of this particular provision of the statute, *and shows beyond doubt the propriety and necessity of the injunction sought.*
>
> *Plaintiffs, however, are not required to wait until criminal prosecutions are actually brought against them before invoking the equitable relief to which they are entitled under the circumstances.* *Vicksburg Water Works Co. vs. Vicksburg,* 186 U. S., 65, 46 L. Ed., 808; *Waite vs. Macy,* 246 U. S., 606, 62 L. Ed., 892."

A similar conclusion was reached by Judge Lewis of the District of Colorado in the two cases above cited against United States District Attorney Tedro. In the *Temple Fuel Company* case a coal company alleged that the conduct of its business was being interfered with by threatened prosecutions by the defendant United States District Attorney, and in the *Lewis & Sons Drygoods Company* case it was alleged that the drygoods business of the plaintiff was similarly being interfered with by threatened prosecutions. The court took jurisdiction in

both cases and granted injunctions against such threatened criminal proceedings.

The extent to which this Court has gone in holding that the right to conduct business is a property right within the protection of the Constitution of the United States is illustrated by the recent case of *International News Service vs. Associated Press*, 248 U. S., 215. This was a suit brought by the Associated Press against the International News Service to restrain and enjoin the pirating of news gathered by complainant organization and furnishing the same to its papers simultaneously with or immediately following the earliest publication of such news in such papers as had the Associated Press service. It was held by the Circuit Court of Appeals that an injunction should issue against the bodily taking of the words or substance of complainant's news until its commercial value as news had passed away. The question was raised as to whether there was any property right in the current daily news gathered as such by the Associated Press. On this point the court said:

> "Regarding the news, therefore, as but the material out of which both parties are seeking to make profits at the same time and in the same field, we hardly can fail to recognize that for this purpose, and as between them, *it must be regarded as quasi property*, irrespective of the rights of either as against the public."

As to jurisdiction of an equity court to protect a property right the court (decision by Justice Pitney) said:

> "In order to sustain the jurisdiction of equity over the controversy, we need not affirm any general and absolute property in the news as such. *The rule that a court of equity concerns itself only in the protection of property rights treats any civil right of a*

*pecuniary nature as a property right.* (*In re Sawyer*, 124 U. S., 200, 210; *In re Debs*, 158 U. S., 564, 593); *and the right to acquire property by honest labor or the conduct of a lawful business is as much entitled to protection as the right to guard property already acquired. Truax vs. Raich*, 239 U. S., 33, 37-38; *Brennan vs. United Hatters*, 73 N. J. L., 729, 742; *Barr vs. Essex Trades Council*, 53 N. J. Eq., 101. It is this right that furnishes the basis of the jurisdiction in the ordinary case of unfair competition." (P. 236.)

In this case the Court referred to the earlier cases of *Board of Trade vs. Christy Grain & Stock Company*, 198 U. S., 236, 250, and *National Tel. News Co. vs. Western Union Tel. Co.*, 119 Fed., 294.

In the first of these two cases, the plaintiff's collection of board of trade quotations was held to be a property right which was entitled to protection in a court of equity.

In the second of these two cases, the issue was presented as to whether news matter gathered and transmitted by telegraph and consisting merely of a quotation of current events having an extremely transient value was property. Mr. Justice Pitney in delivering the opinion of the court in the *International News Service* case, *supra*, summarizes the holding by the Circuit Court of Appeals in the *National Tel. News Company* case, in the following language:

"*Nevertheless held that the business of gathering and communicating the news*—the service of purveying it—was a legitimate business, meeting a distinctive commercial want and adding to the facilities of the business world, and *partaking of the nature of property in a sense that entitles it to the protection of a court of equity against piracy.*"

There are two notable decisions in this Court which, because of the peculiar facts therein involved, further illustrate how far this Court has gone in declaring that the right to be employed and to receive the earnings resulting from such employment is a property right entitling the parties in interest to protection in equity against unlawful interference by threatened criminal proceedings. We refer to the cases of *Truax vs. Reich*, 239 U. S., 33, and *Hammer vs. Dagenhart*, 247 U. S., 251.

In *Truax vs. Raich, supra*, a native of Austria, employed as a cook by defendant Truax, had brought a bill against his employer and *Jones, Attorney General of the State, and Gilmore, County Attorney*, to enjoin threatened prosecution of Truax for employing more employees who were aliens than was permitted under the Statute of Arizona, which statute the bill alleged was unconstitutional and void. Interlocutory injunction was issued and direct appeal was taken to the Supreme Court of the United States. Mr. Justice Hughes, in delivering the opinion of the court, said (page 37):

> "It is also settled that while a court of equity, generally speaking, has 'no jurisdiction over the prosecutions, the punishment or the pardon of crimes or misdemeanors' (*In re Sawyer*, 124 U. S., 200, 210) a distinction obtains, and equitable jurisdiction exists to restrain criminal prosecutions under unconstitutional enactments, *when the prevention of such prosecution is essential to the safeguarding of rights of property. Davis & Farnum Mfg. Co. vs. Los Angeles*, 189 U. S., 207, 218; *Dobbins vs. Los Angeles*, 195 U. S., 223, 241; *Ex parte Young, supra; Philadelphia Co. vs. Stimson, supra*, p. 621. *The right to earn a livelihood and to continue in employment unmolested by efforts to enforce void enactments should similarly be entitled to protection in*

*the absence of adequate remedy at law. It is said that the bill does not show an employment for a term, and that under an employment at will the complainant could be discharged at any time for any reason or for no reason, the motive of the employer being immaterial. The conclusion, however, that is sought to be drawn is too broad. The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employee has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion, and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at will. Moran vs. Dunphy,* 177 Massachusetts, 485, 487; *Berry vs. Donovan,* 188 Massachusetts, 353; *Brennan vs. United Hatters,* 73 N. J. Law, 729, 743; *Perkins vs. Pendleton,* 90 Maine, 166; *Lucke vs. Clothing Cutters,* 77 Maryland, 396; *London Guar. & Acc. Co. vs. Horn,* 101 Ill. App., 355, S. C., 206 Illinois, 493; *Chipley vs. Atkinson,* 23 Florida, 206; *Blumenthal vs. Shaw,* 23 C. C. A., 290, S. C., 77 Fed. Rep., 954. It is further urged that the complainant cannot sue save to redress his own grievance (*McCabe vs. Atchison, Topeka & Santa Fe Ry.,* 235 U. S., 151, 162); *that is, that the servant cannot complain for the master and that it is the master who is subject to prosecution, and not the complainant. But the act undertakes to operate directly upon the employment of aliens and if enforced would compel the employer to discharge a sufficient number of his employees to bring the alien quota within the prescribed limit. It sufficiently appears that the discharge of the complainant will be solely for the purpose of meeting of the requirements of the act and avoiding threatened prosecution under its provisions. It is, therefore, idle to call the injury indirect or remote.* It is also entirely clear that unless the enforcement of the act is restrained the complainant will have no adequate remedy, and hence

we think that the case falls within the class in which, if the unconstitutionality of the act is shown, equitable relief may be had."

In *Hammer vs. Dagenhart, supra,* the bill was brought by a father on his own behalf and as the next friend of his two minor children to enjoin the enforcement of an Act of Congress prohibiting transportation in interstate commerce of goods manufactured by child labor, it being claimed that the employer of the plaintiff's minor children was likely to discharge them because of fear of prosecution under said act. It is stated by Judge Hand (259 Fed., 326) that the brief of complainants filed in the *Hammer* case discussed the question of jurisdiction of the court. Such jurisdiction was in any event assumed by the court in passing on the merits of the case.

**C. THE RIGHT OF THE PLAINTIFFS TO EQUITABLE RELIEF IS NOT DEFEATED BY THE FACT THAT THEY HAVE AN ALLEGED REMEDY, UNLESS SUCH ALLEGED REMEDY IS COMPLETE AND ADEQUATE.**

*St. Louis & San Francisco R. R. Co. vs. McElvin,* 253 Fed., 123.

In this case there was an application for an injunction to restrain McElvin from further prosecuting a suit at law against the railroad company. It was objected that the railroad company would have an adequate remedy at law in its defense to the suit in state courts, but the Court said:

"The adequate remedy at law which will prevent the maintenance of a suit in equity in a federal court is a remedy 'as practicable and efficient to the ends of justice and its prompt administration as the remedy in equity.' *Boyce vs. Grundy,* 3 Pet., 210, 215; *Oelrichs vs. Spain,* 15 Wal., 211; *Hayden*

*vs. Thompson,* 71 Fed., 60; *Springfield Milling Co. vs. Barnard & Leas Mfg. Co.,* 81 Fed., 261, 265; *Rogers Penobscot Mining Co.,* 154 Fed., 606, 613."

It will doubtless be urged that inasmuch as the constitutionality of the statute could be set up as a defense in any criminal proceeding, any parties charged in such proceedings had a complete remedy at law and could not base their claim to equitable relief on the alleged unconstitutionality of the statute. On this point we respectfully call the Court's attention to the case of *Dobbins vs. Los Angeles,* 195 U. S., 223, 242. In this case the Court said:

> "It is well settled that where property rights will be destroyed, unlawful interference by criminal proceedings under a void law or ordinance may be reached and settled by a decree of a court of equity."

Each sale of sugar made by the plaintiffs might be held to constitute a separate offense, and subject them to separate prosecutions and the heavy penalty provided by statute. These prosecutions would all involve the same issue—the constitutionality and scope of the Lever Law and that issue can be determined and finally disposed of in this equitable proceeding.

## SECTION 4 OF THE LEVER LAW AS AMENDED IS INVALID AND UNCONSTITUTIONAL.

That all the war powers of Congress, however extensive and complete they may be, are subject to constitutional limitations, has been frequently decided by this Court.

*Hamilton vs. Kentucky Distilleries Co.,* 251 U. S., 146, 156.

*Mitchell vs. Harmony,* 13 How., 115, 134.

*Ex Parte Milligan*, 4 Wal., 2, 120, 121.
*United States vs. Russell*, 13 Wal., 623, 627, 629.

In *Ex Parte Milligan*, the Court said, speaking of the protection afforded individual citizens accused of crime by the provisions of the Constitution and particularly by those found in the Fourth, Fifth and Sixth Amendments:

> "These securities for personal liberty thus embodied, were such as wisdom and experience had demonstrated to be necessary for the protection of those accused of crime. And so strong was the sense of the country of their importance, and so jealous were the people that these rights, highly prized, might be denied them by implication, that when the original constitution was proposed for adoption it encountered severe opposition; and, but for the belief that it would be so amended as to embrace them, it would never have been ratified.
>
> "Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words, that it would seem the ingenuity of man could not evade them, are now, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world has taught them that what was done in the past might be done in the future. *The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be*

*suspended during any of the great exigencies of government.* Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government within the Constitution, has all the powers granted to it, which are necessary to preserve its existence; as has been happily proved by the result of the great effort to throw off its just authority."

In *Hamilton vs. Ky. Distilleries,* 251 U. S., 146 at 156, Mr. Justice Brandeis, in delivering the opinion of the court, said, at page 156:

"The war power of the United States, like its other powers and like the police power of the states, *is subject to applicable constitutional limitations* (*Ex Parte Milligan,* 4 Wall., 2, 121-127; *Monongahela Navigation Co. vs. United States,* 148 U. S., 312, 336; *U. S. vs. Joint Traffic Assoc.,* 171 U. S., 505, 571; *McCray vs. U. S.,* 195 U. S., 27, 61; *U. S. vs. Cress,* 243 U. S., 316, 326)."

Original Section 4 of the Lever Law contained no penalty, therefore does not of itself create an offense as that word is used in the criminal law and there is no general penalty law in the statute to cover it.

*United States vs. Mossow,* 261 Fed., 999.

**SECTION 4 OF THE LEVER ACT AS AMENDED IS UNCONSTITUTIONAL BECAUSE OF ITS ARBITRARY CLASSIFICATION.**

The provisos adopted in October 22, 1919, read:

"Provided that this section shall not apply to any farmer, gardener, horticulturist, vineyardist, planter, ranchman, dairyman, stock man, or other agriculturist, with respect to the farm products produced or raised on land owned, leased or cultivated by him."

"Provided further that nothing in this act shall be construed to forbid or make unlawful collective

bargaining by any operative association or other association of farmers, dairymen, gardeners or other producers of farm products with respect to farm products produced or raised by its members upon land owned, leased or cultivated by them."

A great latitude of classification has been allowed under the Constitution of the United States, but there are limits, and there is one limit that has been precisely defined by this Court, and the case which defines that limit applies definitely to the present case. It is the case of *Connelly vs. Union Sewer Pipe Co.*, 184 U. S., 540. This case dealt with the anti-trust act of Illinois. It was a drastic statute and contained, near its end, this provision:

> "The provisions of this act shall not apply to agricultural products or livestock while in the hands of the producer or raiser."

It will be seen that the two classes involved are practically identical. This Court after recognizing the authority to classify said that under the arbitrary selection it could not be justified by causing a classification. Mr. Justice Harlan, in writing the opinion, used this language:

> "Returning to the particular case before us, and repeating or summarizing some thoughts already expressed, it may be observed that if combinations of capital, skill or acts in respect of the sale or purchase of goods, merchandise or commodities, whereby such combinations may, for their benefit exclusively, control or establish prices, are hurtful to the public interests and should be suppressed. It is impossible to perceive why like combinations in respect of agricultural products and livestock are not also hurtful. Two or more engaged in selling drygoods, or groceries, or meats, or fuel, or clothing, or merchandise, are, under the statute, criminals, and

subject to a fine, if they confine their capital, skill or acts for the purpose of establishing, controlling, increasing or reducing prices, or are preventing free and unrestrained competition amongst themselves or others in the sale of their goods or merchandise; but that members who happen to be agriculturists and livestock raisers may make combinations of that character in reference to their grain or livestock without incurring the prescribed peñalty. Under what rule of permissible classification can such legislation be sustained as consistent with the equal protection of the laws? It cannot be said that the exemption made by the 9th section of the statute was of slight consequence, as affecting the general public interested in domestic trade and entitled to be protected against combinations formed to control prices for their own benefit; for it cannot be disputed that agricultural products and livestock in Illinois constitute a very large part of the wealth and property of that state.

"We conclude this part of the discussion by saying that to declare that some of the class engaged in domestic trade or commerce shall be deemed criminals if they violate the regulations prescribed by the state for the purpose of protecting the public against legislative combinations formed to destroy competition and to control prices, and that others of the same class shall not be bound to these regulations, but may combine their capital, skill or acts to destroy competition and to control prices for their special benefit, is so manifestly a denial of the equal protection of the laws that further or extended argument to establish that position would seem to be unnecessary."

The Lever Act was a war act. Congress, in Section 1 of the Act, referred to the importance of an equitable distribution of foods and supplies. The equitable distribution of farm products was of the very essence and policy of the Lever Law. The provision exempting

farmers and making criminals of sugar dealers under the same circumstances we contend is arbitrary and un constitutional.

It may be contended that in the *Connolly* case the Court was dealing with the Fourteenth Amendment and the provision in that amendment as to the denial of the equal protection of the law. We contend that the Sixth Amendment, operative with respect to Congress, prohibiting the deprivation of property without due process of law, carries into it protection against an arbitrary classification of the sort that would condemn state action, under the equal protection clause of the Fourteenth Amendment. It has often been said by eminent jurists that there is no place in American government for the exercise of arbitrary power, and so far as federal action is concerned you have the provision of the Fifth Amendment as a guarantee against such action, and due process of law means the application of equal laws without arbitrary classification, as well as without the other deprivations within the content of that law.

It has been many times held that "due process of law" and "law of the land" express the same thought and have the same meaning. In *Davidson vs. New Orleans,* 96 U. S., 97, 101, Justice Miller said:

> "The equivalent of the phrase 'due process of law,' according to Lord Coke, is found in the words 'law of the land' in the Great Charter in connection with the writ of *habeas corpus* and trial by jury and other guaranties of the rights of the subject against the oppression of the Crown."

In *Missouri Pacific Railroad Co. vs. Humes,* Justice Field said:

> "In England the requirement of due process of law, in cases where life, liberty and property were affected, was originally designed to secure the sub-

ject against the arbitrary action of the Crown and to place him under the protection of the law. The words were held to be the equivalent of 'law of the land,' and a similar purpose must be ascribed to them when applied to a legislative body in this country; that is, that they are intended, in addition to other guaranties against the arbitrary deprivation of life or liberty, and the arbitrary spoliation of property."

In *Scott vs. City of Toledo*, 36 Fed., 385, 393, Judge, later Mr. Justice Jackson citing *Cooley on Constitutional Limitations*, said:

"In a general sense 'due process of law' is identical in meaning with the phrase 'law of the land,' as used in the constitutions of the several states."

It has been frequently held that the phrase "law of the land," as used in the state constitutions, imports a general public law equally binding upon every member of the community and when applied to special or class legislation it means, in addition, that the classification must be natural and reasonable, and not arbitrary and capricious.

The words "due process of law" must have the same meaning in the Fifth and Fourteenth Amendments of the Constitution of the United States.

In *Hurtado vs. California*, 110 U. S., 516, this Court had before it the question whether or not a statute of California authorizing prosecutions for felonies by information without indictment by a grand jury was repugnant to the due process clause of the Fourteenth Amendment, and after comparing the two amendments calling attention to the provision for indictment by a grand jury, in the Fifth Amendment, said:

"The natural and obvious inference is, that in the sense of the Constitution, 'due process of law' was not meant or intended to include, *ex vi termini*, the institution and procedure of a grand jury in any case. The conclusion is equally irresistible, that when the same phrase was employed in the Fourteenth Amendment to restrain the action of the States, it was used in the same sense and with no greater extent."

In *Caldwell vs. Texas*, 137 U. S., 692, 697, this Court had before it the validity of a state statute and said:

"By the Fourteenth Amendment, the powers of the States, in dealing with crime within their borders, are not limited, but no State can deprive particular persons or classes of persons of equal and impartial justice under the law. Law, in its regular course of administration through courts of justice, is due process, and when secured by the law of the State, the constitutional requisite is satisfied." (*2nd Kent's Comm.*, 13), "and due process is so secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government, unrestrained by the established principle of private right and distributive justice. (*Bank of Columbia vs. Okley*, 4 Wheat., 235, 244.)"

In *Leeper vs. Texas*, 139 U. S., 462, this Court said:

"It must be regarded as settled • • • that by the Fourteenth Amendment the powers of states in dealing with crime within their borders are not limited, except that no state can deprive particular persons, or classes of persons, of equal and impartial justice under the law; that law, in its regular course of administration through courts of justice is due process, and when secured by the law of the state the constitutional requirement is satisfied; and that due process is so secured by laws operating on all alike and not subjecting the individual to the ar-

bitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice." (*Hurtado vs. California*, 110 U. S., 516, 535 and cases cited.)

In *Giozza vs. Tierman*, 148 U. S., 657, this Court said:

"Due process of law is not secured within the meaning of the amendment unless the law operates on all alike, and does not subject the individual to an arbitrary exercise of the powers of the government."

*McGeehee* on *Due Process of Law*, page 60, says:

"Purely arbitrary decrees or enactments of legislature directed against individuals or classes are held not to be the law of the land or to conform to due process of law."

*Willoughby* on the *Constitution*, pp. 873, 874, says:

"The United States is not by the Constitution expressly forbidden to deny to anyone the equal protection of the laws, as are the statutes by the first section of the Fourteenth Amendment. It would seem however, that the broad interpretation which prohibition as to due process of law has received, is sufficient to cover very many of the acts which, if committed by the states, might be attacked as denying equal protection. Thus, it has been repeatedly declared that enactments of a legislative decree against particular individuals or corporations, or classes of such, without any reasonable ground for selecting them out of the general mass of individuals or corporations, amounts to a denial of due process of law, so far as their life, liberty or property is affected. One of the requirements of due process of law as stated by the Supreme Court is that the laws 'operate on all alike' and do not subject the individual to an arbitrary exercise of the powers of the government."

In *Murray's Lessee vs. Hoboken Land & Improvement Company*, 18 How., 272, 276, this Court said, in

speaking of the due process clause of the Fifth Amendment:

> "The article is a restraint on the legislative as well as on the executive and judicial powers of the government and cannot be so construed as to leave Congress free to make any process due process of law by its mere will. The doctrine of the *Connolly* case, so far as we have been able to tell, has not been modified. This case has been frequently cited in other cases, and while cases have been distinguished the doctrine of the case has not been in any manner impaired or modified. The classification in amended Section Four of the Lever Law is arbitrary and not natural or reasonable and, we contend, repugnant to the due process clause of the Fifth Amendment of the Constitution, consequently void."

**SECTION FOUR OF THE LEVER ACT AS AMENDED IS SO VAGUE AND INDEFINITE AS TO BE UNCONSTITUTIONAL.**

Such a law does not constitute due process under the requirements of the Fifth Amendment to the Constitution of the United States, nor does it advise the accused of the nature and cause of the accusation brought against him with sufficient definiteness to comply with the requirements of the Sixth Amendment to the Constitution of the United States.

We have already referred to the vague and indefinite terms employed by this section of the Lever law. In order to give this section any reasonable interpretation or to prevent it to be held as purely arbitrary legislation within the prohibition of the Fifth Amendment to the Constitution, there must be read into its provisions the "rule of reason," which was read into the provisions of the Sherman law by this Court in the *Standard Oil* and

*Tobacco cases.* The offenses described in this section were not offenses of common law, and it was therefore necessary that the statute defining them should be so specific that all may know what is and what is not prohibited. The section makes unlawful that which was perfectly lawful prior to the enactment of the statute.

The judges who have sustained this provision of the Lever law have laid down such varying tests for determining whether there has been a violation thereof that they have clearly demonstrated the vagueness and indefiniteness of its provisions. By way of illustration, we will refer to several of these opinions. In *United States vs. Leonard*, District Judge Howell of the Northern District of New York held, that in determining whether or not a price was unreasonable the jury should take into consideration

> "what prices the defendants paid for the goods in the market, whether they bought them in the ordinary course of trade, paying the market price at the time of the purchase, the length of time the defendants have carried them in stock, the expense of carrying on the business, what a fair and reasonable profit on the goods would be, and all the other facts and circumstances in and about the transaction, but not how much the market price had advanced from the time the goods were purchased to the time they were sold."

In *United States vs. Oglesby Grocery Co.*, District Judge Sibley, of the Northern District of Georgia, Northern Division, said:

> "The words used by Congress in reference to a well established course of business fairly indicate the usual and established scale of prices and charges in peace times as a basis, coupled with some flexibility in view of changing conditions. The statute may be construed to forbid, in time of war, any departure

from the usual and established scale of charges and prices in time of peace which is not justified by some special circumstance of the commodity or dealer."

Judge McCall, of the Western District of Tennessee, in his charge to a grand jury, stated that if a shoe dealer bought two orders of exactly the same kind of shoes at different times and at different prices, the first lot at $8 per pair and the second lot after the price had gone up to $12 a pair,

"and then he sells both of those lots at $18 a pair, he is profiteering clearly upon the first lot that only cost him $8. Now he does that upon the theory that if he sells those shoes out and goes into the market and buys again that he will have to pay the higher price, but that does not excuse it. He is entitled to make a reasonable profit, but he certainly has not the right to take advantage of the former purchase and take the same profit as he gets on the $12 shoes."

In *United States vs. Myatt*, Judge Connor, for the Eastern District of North Carolina, says:

"It will be observed that the statute does not declare it unlawful to make an unjust or unreasonable profit on sugar. The profit made is not the test, it may be entirely irrelevant to the guilt of the defendant; he may within the language of the statute, make an unreasonable and therefore unlawful rate or charge without making any profit or the rate or charge made may involve a loss to him upon the purchasing price."

District Judge Hand, of the Northern District of New York, in his charge to the grand jury, said:

"Furthermore it is not the particular profits that the individual himself makes which are the basis of the unreasonable charge, but it is whether the charge is such as gives unreasonable profit, not to him but if established generally in the trade. The law does not mean to say that all people shall charge

the same profit. If I am a particularly skilled merchant or manufacturer and I can make profits which are greater than the run of people in my business, I am allowed to make those profits. So much I am allowed. But if I am charging more than a reasonable charge, taking the industry as a whole, I am not allowed to keep that profit because on other items I am sustaining a loss."

In *United States vs. Goldberg, et al.*, District Judge Bledsoe of the Southern District of California, charged the jury that in passing on the question of the reasonableness of the price for sugar, the jury should take into consideration, among other circumstances, the following:

> "That there was, if you find that there was, a market price here in the community, or generally, with respect of the profit that normally should be made on sugar sold either by the manufacturer or jobbers and retailers."

These cases indicate that a great variety of tests were laid down for determining what is a reasonable price. According to Judge Howell, *United States vs. Leonard*, the jury cannot take into consideration the present market price of the goods; while according to Judge Bledsoe, in *U. S. vs. Goldberg*, they must take into consideration such market prices. According to Judge Sibley, in *U. S. vs. Oglesby Grocery Company*, the reasonableness of prices charged in time of war is to be determined with a view of what were reasonable prices in times of peace.

We respectfully submit that the conflicting tests laid down by the several judges who have sustained the constitutionality of Section Four of the Lever law demonstrate in a most forcible manner the vagueness and indefiniteness of the language there used. Some of these opinions are directly in conflict to that announced by this

Court in the case of *International Harvester Company vs. Kentucky*, 234 U. S., 216. In that case the Court held unconstitutional a state statute which made it a crime to charge more than the "real value" of the article sold, and said:

> "But if business is to go on, men must unite to do it and to sell their wares. To compel them to guess on peril of indictment what the community would have given for them if the continually changing conditions were other than they are, to an uncertain extent, to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers, is to exact gifts that mankind does not possess."

The rule of the *Tozer* case, (*Tozer vs. U. S.*, 52 Fed., 917) has not been overruled by the doctrine of the *Nash* case.

The rule laid down in the *Tozer* case is stated by this Court in *U. S. vs. Reese*, 92 U. S., 214, where Chief Justice Waite said:

> "If the legislature undertakes to define by statute a new offense and provide for its punishment, it should express its will in language that need not deceive the common mind. Every man should be able to know with certainty when he is committing a crime,"

and also in *U. S. vs. Brewer*, 139 U. S., 279, where Mr. Justice Blatchford said:

> "Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. (*U. S. vs. Sharpe*, Pet. C. C., 118.)"

In the case of *Hocking Valley Ry. Co. vs. U. S.*, 210 Fed., 735, 745, the Circuit Court of Appeals for the Sixth

Circuit cites the *Tozer* case in support of the doctrine above referred to.

This Court, in the cases of *International Harvester Co. vs. Kentucky*, 234 U. S., 216, and *Collins vs. U. S.*, 234 U. S., 634, held that the criminal statute there before the court was unconstitutional and void because of its vagueness, and that the earlier decision of *Nash vs. U. S.*, 229 U. S., 373, was not in conflict with such holdings; that is to say, this Court held in these two cases that the rule of the *Tozer* case still is to be applied to criminal statutes.

The *Nash* case had to do with the offenses based upon "restraints of trade" and "monopoly" which had long been defined by the common law and it was held that the statute therefore was not subject to the objection of vagueness and indefiniteness. An examination of the decision of this Court in the *Standard Oil case*, 221 U. S., 1, confirms this view that the Court relied upon the common law definitions of "restraint of trade" and "monopoly," which definitions the Court held must be read into and in effect made a part of the Sherman law.

The offenses created by the Lever Law are new offenses. We have heard no one contend that such a statute could be passed in peace times. The offenses were not offenses at common law, and consequently the vagueness of the terms of the statute cannot be cured or aided by any pre-existing definitions.

The case of *Waters-Pierce Oil Company vs. Texas*, 212 U. S., 86, was not in any sense a criminal case, and consequently the Sixth Amendment to the Constitution was not involved. Furthermore, the statute assailed had to do with "restraints of trade," and therefore fell within the same category as the Sherman law and within the doctrine laid down in the *Nash* case.

In the various arguments made in the lower courts concerning the validity of Section Four and similar sections of the Lever Law, counsel for the government largely relied upon such cases as *Miller vs. Strahl*, 239 U. S., 426, *LeRoy Fiber Company vs. C. M. & St. P. Ry. Co.*, 232 U. S., 340, *Fox vs. Washington*, 236 U. S., 277, *Omaechvarria vs. Idaho*, 246 U. S., 343, *Tyomeis Publishing Co. vs. U. S.*, 211 Fed., 385, *U. S. vs. United States Brewers' Association*, 239 Fed., 163, *Lamar vs. U. S.*, 260 Fed., 561.

An examination of these cases will develop that the statutes involved were held to refer to some standard well established in law. *Miller vs. Strahl* was a civil suit for damages based upon the negligence of a hotel keeper. Attack was particularly made upon a provision of the statute requiring the hotel keepers "to do all in their power to save such guests and inmates." This Court said:

> "And what better test could be devised than that of doing all in one's power as determined by the circumstances"

and in that connection the *Nash* case was cited.

The case of *LeRoy Fiber Company vs. C. M. & St. P. Ry. Co.*, 232 U. S., 340, was not a criminal case, but involved the question whether the plaintiff was negligent in storing flax near a railroad right of way. The Court held that no negligence could be imputed to the plaintiff for using his own premises in a legitimate manner.

In *Fox vs. Washington, supra,* a statute of the State of Washington condemned as criminal any person who should by printed matter encourage an actual breach of the law. Mr. Justice Holmes, in delivering the opinion, said (page 277):

"We understand the state court, by implication at least, to have read the statute as confined to encourage an actual breach of law. Therefore, the argument that this act is both an unjustified restriction of liberty, and too vague for a criminal law, must fail."

In *Omaechvarria vs. Idaho, supra,* where the statute of Idaho forbade the grazing of sheep on ranges usually occupied by cattle, the necessary standard or test was supplied by the well-known customs and experiences in such grazing communities. As the Court pointed out, men familiar with range conditions would have no difficulty in determining which ranges were so used for sheep grazing, therefore it was not vague in reality but gave all persons proper notice of what they were forbidden to do.

The Court pointed out that the expressions used in the act in question are common in other criminal statutes and therefore naturally cited the *Nash* case where the holding of the Court was that the expressions used in the Sherman Act were commonly used and had definite meanings at common law.

In *Tyomies Publishing Company vs. U. S.,* the Court merely decided that Section 211 of the Federal Criminal Code forbidding the sending through the mails of obscene, lewd, lascivious or filthy matter, was sufficiently definite for criminal prosecution.

*U. S. vs. United States Brewers' Association, supra,* dealt with an indictment charging the defendants with conspiracy to make money contributions in connection with an election with which representatives in Congress were to be chosen. The point was made that the statute was vague and uncertain because it failed to define wnat were money contributions. The District Judge in sus-

taining the indictment cited the *Nash* case to the effect that the question was one of the construction of the act and did not go to its constitutionality, and held that the words "money contributions" are not vague and uncertain and that their meaning is plain.

*Lamar vs. U. S., supra,* involved an indictment under the Sherman law. The indictment was not set out, but the Court says it was in the same form approved in the *Nash* case and being under the same law involved in that case naturally held the indictment good.

## CONCLUSION.

For the reasons which we have outlined in this brief, we contend, first, that the provisions of Section Four of the Lever Law, both in the original and amended form, so far as they are the basis for an indictment, are too vague and indefinite in general to constitute a valid definition of a crime. Secondly, we contend that Section Four when amended by the Act of October 22, 1919, had written into it a proviso which constituted an absolutely arbitrary piece of legislation. And we further contend that Congress can neither in time of peace nor in time of war, violate the provisions of the Fifth and Sixth Amendments to the Constitution and create a criminal offense without suitable certainty and definition.

As we have endeavored to show, the District Court had jurisdiction to prevent the irreparable injury to the plaintiffs below, and we respectfully urge that the appellants are entitled to the relief prayed for.

Respectfully submitted,

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